THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.11218 of 2003

P.Karuppusamy ... Petitioner

Vs.

1. The Chairman,
   Tamil Nadu Tourism Development
   Corporation Ltd.,
   Fort St. George, Chennai - 600 009.

2. The Managing Director,
   Tamil Nadu Tourism Development
   Corporation Ltd.,
   Near MLA Hostel,
   Chennai - 600 002. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.K.Raja
For respondents : Mr.R.Kannan

O R D E R

The Writ Petition has been filed praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings No.5757/O.Ni.1/97, dated 23.12.1998 and the proceedings No.5757/O.Ni.1/97, dated 14.9.1999, and quash the same and to direct the respondents herein to reinstate the petitioner in service with all backwages, monetary and other attendant benefits.

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The brief facts of the case, as stated by the petitioner, are as follows:

2. It is stated by the petitioner that he was appointed as a Front Office Assistant in the Tamil Nadu Tourism Development Corporation Limited, through the Employment Exchange, in the year, 1983. While so, on 15.10.1997, he was placed under suspension. On 24.10.1997, a charge memo was framed containing the charges on 11 counts. Though the petitioner had

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submitted his explanation denying the charges, an enquiry was conducted and the petitioner was found to be guilty of the charges. Hence, he was removed from service by the proceedings of the second respondent in proceedings No.5757/O.Ni.1/1997, dated 23.12.1998. The petitioner had filed an appeal to the Board of Directors. Since the appeal was kept pending and it had not been disposed of, the petitioner had moved this Court by way of a writ petition in W.P.No.3200 of 2003, praying for a writ of mandamus to direct the respondents therein to pass an order on the petitioner's appeal. By an order, dated 3.2.2003, this Court had directed the first respondent therein to dispose of the appeal within a period of eight weeks from the date of receipt of a copy of the said order. Later, it was learnt that the appeal filed by the petitioner had been disposed of, on 14.9.1999 itself, rejecting the plea of the petitioner and the order, dated 14.9.1999, was communicated to the petitioner only, on 22.3.2003. Therefore, the petitioner has come forward with the present writ petition challenging the order of the second respondent, dated 14.9.1999, rejecting the appeal filed by the petitioner.

3. The petitioner had stated that the punishment of removal from service imposed by the second respondent is disproportionate to the charges levelled against him. The Enquiry Officer's report ought to have been served at the first instance and only thereafter, a show cause notice ought to have been issued to the petitioner. However, in the present case, the Enquiry Officer's report was served on the petitioner along with the show cause notice. The enquiry has not been conducted in a free and fair manner. The charge memo, the statement of the allegations and the statement of the witnesses were not furnished to the petitioner, in spite of his repeated representations. The complainant was not examined as a witness in the enquiry and the petitioner had not known the nature of the complaint. Further, there was no discussion in the order about the charges, explanation to the charges, the enquiry report and the explanation given to the show cause notice. Therefore, the appellate authority has passed the non-speaking order, without giving an opportunity to the petitioner and in violation of the principles of natural justice.

4. In the counter-affidavit filed on behalf of the respondents, it is stated that the petitioner was appointed as an attendant and he had joined duty, on 22.8.1983, at Hotel Tamil Nadu, Madurai. On 4.11.1987, he was redesignated as a Front Office Assistant and was transferred to Rameswaram. In the year 1992, while he was working as the Front Office Assistant, at Rameswaram, he was awarded the punishment of censure for insubordination and negligence in his duty. On 2.9.1997, a complaint was received against the petitioner. After verification, the first respondent had directed the Joint General Manager of the Corporation to enquire into the complaint. The Joint General Manager had conducted an enquiry and submitted a report, on 14.10.1997. Based on the report, the petitioner was placed under suspension, by the proceedings No.283/HTN/RMM/97, dated 15.10.1997. The charges were framed on 11 counts and a show cause notice had been issued, along with the charge memo, asking the petitioner to

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submit his explanation for the charges levelled against him. The petitioner had sent his explanation, on 1.11.1997, denying the charges. As the explanation submitted by the petitioner was not convincing, the respondent Corporation, by its proceedings No.5757/HAT/97, dated 9.3.1998, had appointed S.Devi Mohan, Assistant Chief Manager (TPT), as the Enquiry Officer to enquire into the charges levelled against the petitioner. S.Bosco, Deputy Manager, Office of the Regional Manager (South) had been appointed as the Management representative.

5. It has been further stated that from 18.3.1998 to 19.3.1998, the enquiry was conducted, following the principles of natural justice and the procedures established by law. The petitioner had participated in the enquiry without raising any objection. At the conclusion of the enquiry, the enquiry Officer had submitted his detailed report, on 23.3.1998. On 26.11.1998, the petitioner had submitted a letter accepting his mistakes and had requested the respondent Corporation not to take any action against the petitioner and tendered an unconditional apology for his act. The said letter is a clear proof to show that the petitioner had acted against the interest of the respondent Corporation. Thereafter, the petitioner was dismissed from service by the proceedings No.5757/HAT/97, dated 23.12.1998. The order of termination was challenged by the petitioner by way of an appeal, dated 2.2.1999, and 25.2.1999. The appeal filed by the petitioner was rejected in the 184th meeting of the Board, held on 3.8.1999, and the same was communicated to the petitioner.

6. The learned counsel appearing on behalf of the petitioner submits that according to Rule 8 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the authorities empowered to impose the punishment can impose the same only for good and sufficient reasons. This has not been seen to be stated in the order dismissing the petitioner from his service. According to Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the Appellate Authority ought to have considered, whether the facts, on which the order was based, have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is excessive, adequate, or inadequate, before passing the order in appeal.

7. The learned counsel appearing on behalf of the petitioner had relied on the following decisions to support his contentions. They are as follows:

7.1 In DIRECTOR (MKT.), INDIAN OIL CORP., LTD., Vs. SANTOSH KUMAR, reported in (2006 (3) CTC 669), the Supreme Court has held that "it was evident in the order of the Appellate Authority that there was non-application of mind as the Appellate Authority had merely adopted the language employed by the disciplinary authority while inflicting the punishment of dismissal."

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7.2 In N.VANAJA Vs. THE BOARD OF DIRECTORS OF TAMIL NADU SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD., CHENNAI rep. by its CHAIRMAN AND ANOTHER, reported in 2006 (4) CTC 52, this Court has held that "the appellate authority should have considered whether the penalty imposed is adequate, inadequate or severe and ought to have passed appropriate orders. But, no reason was given by the Appellate Authority as to whether the punishment imposed by the disciplinary authority was adequate or inadequate. Therefore, the order of the Appellate Authority affirming the order passed by the Disciplinary Authority is set aside."

7.3 In RAM CHANDER Vs. UNION OF INDIA AND OTHERS, reported in (AIR 1986 S.C.1173), the Supreme Court has held that "it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case ((1985) 3 SCC 398) that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

7.4 In MANAGING DIRECTOR ECIL, HYDERABAD Vs. B.KARUNAKAR, reported in (1993 (3) AISLJ 193 (SC)), the Supreme Court has held that "Article 311 (2) applies only to the members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment. Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence, to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry

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occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

8. Per contra, the learned counsel appearing on behalf of the respondents, had pointed out that the petitioner himself had admitted his mistakes by a letter, dated 26.11.1998. Since the petitioner was given full opportunity to defend his case, he did not ask the Enquiry Officer to summon the complainant as a witness. Since the charges levelled against the petitioner were serious in nature and warranting a severe punishment, the petitioner had been dismissed from service. Further, it is submitted on behalf of the respondents that by a preliminary report, dated 2.11.1998, was communicated, along with the necessary documents, to the petitioner asking him as to why he should not be imposed with the punishment of removal from service. Therefore, the petitioner was given ample opportunity in accordance with the principles of natural justice with regard to the punishment proposed to be imposed.

9. The learned counsel appearing on behalf of the respondents had relied on a decision of the Supreme Court in VIVEKA NAND SETHI Vs. CHAIRMAN, J & K BANK LTD., AND OTHERS, reported in ((2005) 5 SCC 337), the Supreme Court has held that "the principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."

10. In THE EAST INDIA HOTELS Vs. THEIR WORKMEN AND OTHERS, reported in (AIR 1974 S.C. 696), the Supreme Court has held that "when a proper enquiry has been held by an employer and the finding of misconduct has support from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified when the enquiry is unfair or the findings arrived at in the enquiry are perverse or have no basis in evidence or the management is guilty of victimisation, unfair labour practice or mala fide or the punishment is harsh and oppressive. The Tribunal cannot, therefore, reappraise the evidence and arrive at a conclusion different from that arrived at by the domestic Tribunal. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the

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order, has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action. Once misconduct is proved, either in the enquiry conducted by the employer or by the evidence placed before the Tribunal the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive."

11. In STATE OF U.P. Vs. SHEO SHANKER LAL SRIVASTAVA AND OTHERS, reported in ((2006) 3 SCC 276), the Supreme Court has held that "it is now well-settled that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. The High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

12. In A.SUDHAKAR Vs. POSTMASTER GENERAL, HYDERABAD AND ANOTHER ((2006) 4 SCC 348), the Supreme Court has held that "in terms of Article 311(2) of the Constitution of India, the procedural requirements, which were required to be followed were as under:

> (i) opportunity to the officer concerned to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;
>
> (ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and
>
> (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

It is well-settled that those principles of natural justice are not embodied principles. The requirements contained in Article 311(2) of the Constitution are held to be as a part of the principle of natural justice. The courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance of the procedure, the court may not interfere."

13. In NATIONAL FERTILIZERS LTD. AND ANOTHER VS. P.K.KHANNA, reported in ((2005) 7 SCC 597), the Supreme Court has held as follows:

> "9. Apart from misreading the Enquiry Officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the Disciplinary Authority is required to give reasons only when the

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Disciplinary Authority does not agree with finding of the Enquiry Officer. In this case the Disciplinary Authority had concurred with the findings of the Enquiry Officer wholly, in Ram Kumar v. State of Haryana(1987 Supp SCC 582), the Disciplinary Authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the Enquiry Officer, the finding of the Enquiry Officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the Disciplinary Authority in this case. Learned Counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the Disciplinary Authority had, in Ram Kumar(1987 Supp SCC 582) case itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words:-

> "8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order".

We respectfully adopt the view. The position is further clarified by Rule 33 of the Employees (Conduct, Discipline and Appeal) Rules. It reads as follows:-

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"1. The Disciplinary Authority, if it is not itself the Enquiring Authority may, for reasons to be recorded by it in writing remit the case to the Enquiring Authority for fresh or further Enquiry and report and the Enquiring Authority shall there upon proceed to hold further Enquiry according to the provisions of Rule 32 as far as may be.

2. The Disciplinary Authority shall, if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3. If the disciplinary authority having regard to its findings on all or any of the penalties specified in Rule 29 should be imposed on the employee shall, notwithstanding any thing contained in Rule 31, make an order imposing such penalty.

4. If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."

11. The respondent's reliance on the decision in M.D., ECIL Vs. B.Karunakar (1993) 4 SCC 727 is misplaced. That decision relates to the right of a delinquent officer to a copy of the Enquiry Officer's report. In the course of the judgment the Court had no doubt said that the report of the Enquiry Officer is required to be furnished to the employee to make proper representation to the Disciplinary Authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the Disciplinary Authority. It does not require the Disciplinary Authority to record separate reasons from those given by the Enquiry Officer. The concurrence of the Disciplinary Authority with the reasoning and conclusion of the Enquiry Officer means that the Disciplinary Authority has adopted the conclusion and the basis of the conclusion as its own. it is not necessary for the Disciplinary Authority to restate the reasoning."

14. On a perusal of the records available and on analysing the rival contentions of the parties concerned, this Court is of the considered view that the principles of natural justice have been substantially complied with and that, unless it is clearly shown that the non-compliance of

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certain aspects of procedural formalities has really prejudiced the petitioner, no relief can be granted. Further, the admission of guilt by the petitioner is clear from the letter of the petitioner, dated 26.11.1998. In such circumstances, it cannot be held that the petitioner had been prejudiced in any way by the allegation that the enquiry report was furnished to him only along with the show cause notice, dated 25.3.1998.

15. In such circumstances, the petitioner has not made out a case for interference by this Court, with the order passed by the second respondent in his proceedings No.5757/O.Ni.1/97, dated 23.12.1998, and the proceedings No.5757/O.Ni.1/97, dated 14.9.1999. Therefore, the writ petition stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman,
   Tamil Nadu Tourism Development
     Corporation Ltd.,
   Fort St. George, Chennai - 600 009.

2. The Managing Director,
   Tamil Nadu Tourism Development
     Corporation Ltd.,
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1 cc To M/s.Kannan, Advocate, SR.5585.

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